

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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Parallax HEALTH SCIENCES, INC.,	:	Case No. 20-cv-2375-LGS-RWL
	:	
Plaintiff,	:	
	:	
- against -	:	JUDGMENT
	:	
EMA FINANCIAL, LLC,	:	
	:	
Defendant.	:	
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WHEREAS, on March 18, 2020, Plaintiff commenced this action. Dkt. No. 1.

WHEREAS, on April 10, 2020, Plaintiff filed an Amended Complaint. Dkt. No. 19.

WHEREAS, on April 27, 2020, Defendant filed its Answer and Counterclaims (the “Answer”). Dkt. Nos. 22-23.

WHEREAS, on October 7, 2020, Plaintiff’s former counsel filed a motion to withdraw as counsel. Dkt. No. 62.

WHEREAS, on October 23, 2020, the Court issued an Order (the “October 23, 2020, Order”) granting Plaintiff’s former counsel’s motion to withdraw and staying this matter for thirty days. Dkt. No. 63.

WHEREAS, the October 23, 2020, Order, warns Plaintiff that, as an entity, its failure to appear by counsel within thirty days could result in dismissal. Dkt. No. 63.

WHEREAS, on November 24, 2020, Defendant filed a letter seeking leave to move for default judgment as to Defendant’s counterclaims and to move to dismiss Plaintiff’s claims for failure to prosecute. Dkt. No. 67.

WHEREAS, on November 24, 2020, the Court issued an Order directing Plaintiff to appear by counsel by December 1, 2020, and to respond to Defendant's request for leave to move for default judgment. Dkt. No. 68.

WHEREAS, Plaintiff did not appear by counsel or otherwise.

WHEREAS, on December 28, 2020, the Clerk of Court issued a Certificate of Default against Plaintiff. Dkt. No. 78.

WHEREAS, by Order dated December 29, 2020, Plaintiff was ordered to show cause on January 28, 2021, why an order should not be issued pursuant to Federal Rule of Civil Procedure 55, granting Defendant default judgment on the counterclaims, and pursuant to Federal Rule of Civil Procedure 41(b), dismissing the claims for failure to prosecute this action (the "Order to Show Cause"). Dkt. No. 85.

WHEREAS, on December 30, 2020, Defendant filed an affirmation of service stating that Plaintiff had been served the Order to Show Cause and supporting papers by overnight mail. Dkt. No. 86.

WHEREAS, Plaintiff did not file an opposition to the Order to Show Cause and failed to appear for the conference on January 28, 2021.

WHEREAS, "[d]ismissal for failure to prosecute, pursuant to Fed. R. Civ. 41(b), is a matter committed to the discretion of the district court." *Romandette v. Weetabix Co.*, 807 F.2d 309, 312 (2d Cir. 1986); accord *Mai v. Citigroup Glob. Mkts. Holdings Inc.*, No. 20 Civ. 11129, 2021 WL 3239548, at *1 (S.D.N.Y. July 30, 2021). District courts deciding whether to dismiss claims pursuant to Rule 41(b) consider:

- (1) the duration of the plaintiff's failure to comply with the court order, (2) whether plaintiff was on notice that failure to comply would result in dismissal;
- (3) whether the defendants are likely to be prejudiced by further delay in the proceedings, (4) a balancing of the court's interest in managing its docket with the

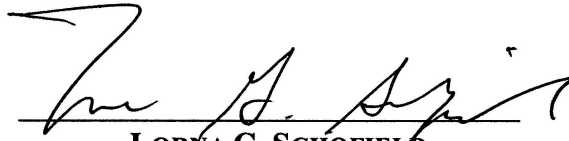
plaintiff's interest in receiving a fair chance to be heard, and (5) whether the judge has adequately considered a sanction less drastic than dismissal.

Baptiste v. Sommers, 768 F.3d 212, 216 (2d Cir. 2014) (per curiam) (citation and internal quotation marks omitted); *accord Morales v. N.Y. Presbyterian Hosp.*, No. 18 Civ. 9711, 2021 WL 3076676, at *3 (S.D.N.Y. July 20, 2021).

WHEREAS, Plaintiff failed to appear or respond to several Court Orders between October 23, 2020, and January 28, 2021. Plaintiff was warned that failure to appear could result in dismissal of the claims. Dkt. No. 63. Plaintiff failed to respond to the Order to Show Cause as to why default judgment on the counterclaims should not be entered in favor of Defendant and why the claims should not be dismissed. It is hereby

ORDERED that a default judgment shall be entered in favor of Defendant as to the counterclaims and the Amended Complaint is dismissed with prejudice pursuant to Rule 41(b)(2). A separate referral order for an inquest on damages will issue.

Dated: August 10, 2021
New York, New York


LORNA G. SCHOFIELD
UNITED STATES DISTRICT JUDGE